IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 5191 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJULA MUNICIAPALITY - Appellant(s)
Versus
NAJABHAI SAMATBHAI AHIR - Defendant(s)

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Appearance :
MR PV HATHI for Appellant(s) : 1,
MR PANKAJ R DESAI for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 03/04/2007

ORAL JUDGMENT

1. The present First Appeal arise against the judgement and award by the Tribunal in MACP No.197 of 1999, whereby the compensation of

Rs.1,13,800/- is ordered to be paid with interest at the rate of 9% and the cost.

2. The short facts appear to be that on 18.1.1999 when the original-claimant was passing on road as pedestrian he raised the hand for hiring rickshaw No.GJ-11-B-4362 and the rickshaw was stopped and while he was to sit inside rickshaw, the driver of motorcycle belonging to appellant Municipality got dashed with rickshaw from back side, and consequently the claimant sustained injuries. The claim petition was filed before the Tribunal, who ultimately passed judgement and award against which the present appeal.

3. Heard Mr.Hathi, learned Counsel for the appellant and Mr.Desai, learned Counsel for the respondent.

4. Mr.Hathi, learned Counsel appearing for the appellant raised the contention that the driver of motorcycle, which was owned by the Municipality was not joined as the party and, therefore, the Tribunal ought not to have passed the award against the Municipality, which was the owner of the motorcycle and there is an

error committed by the Tribunal in passing the judgement and award against the Municipality.

5. The examination of the said contention shows that as such in the present case it is an admitted position that the affidavit was filed by the driver of the motorcycle namely; Jethabhai Naranbhai Solanki Ex. 47. Mr.Hathi, learned Counsel, during the course of the hearing, has made available to the Court certified copy of the said affidavit together with the cross-examination, which shows that as per the said affidavit, the person concerned, who was driving the motorcycle, was incharge of the said vehicle. He has been cross-examined and the evidence has come on record. When the liability is joint and several of all tortfeasors , it is not a mandatory requirement in every case for joining driver. It will be for the claimant to establish and discharge the burden of the negligence and the liability of the owner. If the same is sufficiently discharged, the award cannot be said as without there being any jurisdiction on the part of the

Tribunal. The reference may also be made to the decision of the Division Bench of this Court in case of **"Amari Jugabhai and Ors. v. Vijayaben Hemantlal Dhulia and Ors.", reported in 1996(1) GLH, 1007,** in which the Division Bench has, in detail, dealt with the concept of joint tortfeasors and negligence and the fastening of the liability upon the tortfeasors jointly as well as severally. Therefore, the said contention of Mr.Hathi cannot be accepted.

6. Mr.Hathi also raised contention that the income of the deceased is assessed at Rs.1,500/- per month by the Tribunal, though there was no sufficient evidence was produced on record and, therefore, there is an error by the Tribunal.

7. The examination of the said contention shows that the Tribunal has dealt with the said aspect at Issue No.2. It has come on record that the injured was doing the contract work. The evidence, as per the claimant, was of Rs.5,000/- per month. The Tribunal has considered a very conservative figure and assessed the income at the rate of Rs.1,500/- per month and considering

the age of the claimant as that of 35 years, multiplier of 15 is applied. Considering the evidence on record, it cannot be said that the income assessed at the rate of Rs.1,500/- by the Tribunal is without there being any basis and even if such aspect is re-appreciated, it cannot be said that any error is committed by the Tribunal in concluding the income at the rate of Rs.1,500/- per month of the claimant and for applying multiplier of 15. Hence, the said contention of Mr.Hathi fails.

8. Mr.Hathi also contended that the interest awarded by the Tribunal is at the rate of 9% per annum, whereas during the said period 2000 to 2005 the prevailing rate of interest was 7% and, therefore, there is an error committed by the Tribunal.

9. It appears that no evidence is produced by the Municipality in support of the said contention. Further, if the Tribunal has awarded interest at the rate 9% per annum, such cannot be said as unreasonable or highly disproportionate to the prevailing rate of interest. Hence, the said

contention of Mr.Hathi cannot be accepted.

10. Mr.Hathi lastly submitted that the Municipality is financially facing great difficulty and, therefore, the Municipality may be put to liberty of paying amount by instalment of Rs.10,000/- per month, since in his submission, even otherwise also the Tribunal has ordered to invest the amount in the FDR.

11. I am afraid such contention can be accepted on a mere ground of financial constraint on the part of the appellant, which is a Municipality. As such in the present appeal such ground would be extraneous to the exercise of the power of this Court as an appellate Court. All such aspects can at the most be considered at the time of execution, if such questions arise before the appropriate Court or the Tribunal.

12. In view of the above, appeal fails. Hence, the same is dismissed. No order as to costs.

3.4.2007 **(Jayant Patel, J.)**

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